

August 4, 2015



Talbot County Planning Commission
Final Decision Summary

Wednesday, June 3, 2015 at 9:00 a.m.

Bradley Meeting Room

11 N. Washington Street, Easton, Maryland

Attendance:

Commission Members:

Thomas Hughes, Chairman
John N. Fischer, Jr., Vice Chairman
William Boicourt
Paul Spies

Staff:

Mary Kay Verdery, Planning Officer
Daniel Brandewie, Assistant Planning Officer
Jeremy Rothwell, Planner I
Mike Mertaugh, Assistant County Engineer
Tony Kupersmith, Assistant County Attorney
Carole Sellman, Recording Secretary

1. **Call to Order**—Commissioner Hughes called the meeting to order at 9:00 a.m. Commissioner Hughes explained that Commissioner Sullivan would not be in attendance. He explained that tie votes are considered a negative vote. If any applicant chooses they can withdraw without penalty until the next month. None chose to do so.
2. **Decision Summary Review**—May 6, 2015—The Commission noted the following corrections to the draft decision summary:
 - a. Line 202, remove the last sentence, it is redundant.
 - b. Line 294, strike the words “just wanted to note on the record” and insert “commented”.
 - c. Line 377, correct to read, “Mr. Clarke said yes it would.”
 - d. Line 382, correct to read, “Mr. Clarke stated that yes it is.”
 - e. Line 386, correct to read as follows: “Commissioner Hughes stated it seems to be no need to increase the capacity of the plant, the need is to fix the infrastructure.”
 - f. Line 402, revised to read: Commissioner Fischer expressed disappointment that members of the Planning Commission have not been included in County Council public workshops on the draft Comprehensive Plan. He stated that, as drafters of the Plan, Planning Commission members might have clarified many of the questions and uncertainties expressed by Council members in the course of the workshops.
 - g. Line 424, correct to read: “the citizens’ plan.”
 - h. Line 435, correct to read: “If that change goes through, the word discourage will be debated ad nauseam in front of this Commission. I cannot imagine the Council making changes to educational policy without having discussions with the school board...”
 - i. Line 438, correct to read: “without having consultation with that group or making changes to the waste water plans...”

- 54 j. Line 441, after the comma change the “but” to “and even policies that have been
55 in place for more than half a century”
- 56 k. Line 450, strike the sentence and substitute the words: “Commissioner Fischer
57 asked for an explanation of state law as it pertains to the relationship between
58 Planning Commissions and County Councils in the development of
59 Comprehensive Plans.”
- 60 l. Line 487, correct as follows; Commissioner Spies asked if the Commission will
61 have an opportunity on record to state that they support or do not support the
62 Comprehensive Plan. Ms. Verdery stated they absolutely would through the
63 public hearing process.
- 64 m. Line 490-494, replace with the following text: Commissioner Fischer expressed
65 surprise that members of the County Council appear to believe that the draft
66 Comprehensive Plan originated in the Planning Commission. In fact, both the
67 current 2005 Plan and the updated 2015 draft of that plan are the result of
68 hundreds of hours of dedicated time, effort and intellect by a broad spectrum of
69 County citizens. He stated that, as such, it represents a clear vision of our citizens
70 for the future of this County. In a representative democracy, they have every right
71 to expect that the Planning Commission and the County Council will respect that
72 vision and govern accordingly. Certainly, it would be inappropriate for either
73 body to view the Plan as a document, “to rewrite as we see fit.”

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75 Commissioner Boicourt moved to approve the draft Planning Commission
76 Decision Summary for May 6, 2015, as amended; Commissioner Spies seconded
77 the motion. The motion carried unanimously.
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79 **3. Old Business—None.**
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81 **4. New Business**
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- 83 a. Levin Schwaninger, Sr. #S1056—6022 Landing Neck Road, Trappe, MD 21673,
84 (map 48, grid 6, parcel 193, Lot 5, zoned Agricultural Conservation), Chris
85 Waters, Waters Professional Land Surveying, Agent.
86

87 Mr. Rothwell presented the staff report of the applicant’s request for a small scale
88 subdivision to create a single buildable lot from Lot 5 of Tax Parcel 195. With
89 this subdivision, proposed Lot 6 and Revised Lot 5 will each be 53.08 acres.
90 Revised Lot 5 will continue to retain the original farmhouse and agricultural
91 outbuildings, while proposed Lot 6 is completely void of any dwellings or
92 structures. Lastly, the applicants have proposed to extend Never Dun Lane (a
93 private road) by approximately 490 feet. There is a small intermittent stream
94 included in the reserve land area.
95

96 Staff recommendations include:
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- 98 1. Address the May 13, 2015 Technical Advisory Committee comments from the
99 Department of Planning and Zoning, Department of Public Works,

Environmental Health Department, Talbot Soil Conservation District, the Environmental Planner and the Critical Area Commission prior to preliminary plat submittal.

Chris Waters, Waters Surveying appeared on behalf of the applicant. The application is creating Lot 6 to divide the estate. Mr. Waters felt it would be beneficial to extend the road to give Lot 6 more access.

Mr. Boicourt questioned the future road access listed on the plat. Mr. Rothwell stated Bay Acres Drive was created to serve Lot 1 and 2. Lots 3 and 4 would not be able to access Bay Acres Drive.

Commissioner Hughes asked for public comments; none were made.

Commissioner Boicourt moved to approve the sketch Small Scale Subdivision for Levin Schwaninger, Sr., 6022 Landing Neck Road, Trappe, MD 21673, provided compliance with staff recommendations occurs; Commissioner Spies seconded. The motion carried unanimously.

- b. Talbot County, Maryland #L1232—Oxford Road (MD Route 333), Oxford, MD 21654 (map 53, grid 2, parcel 90, zoned Rural Conservation/Town Conservation), Chris Waters, Waters Professional Land Surveyors, Agent.

Mr. Rothwell presented the staff report for the preliminary major revision plat for Talbot County, Maryland. The applicant is requesting to abandon 31 building lots and five paper streets that were created as part of the Oxford Estates subdivision, which was platted on October 10, 1956 (Plat Reference 10/79). The before-mentioned subdivision was platted on approximately 13 acres of the 86.189 acres on Tax Parcel 90, and is separated from the rest of Tax Parcel 90 by Bonfield Manor Road. The purpose of this revision plat is to allow for the creation of a public park, whose site plan was submitted concurrently with the major revision plat. The applicant has made no significant changes since coming in for sketch plan approval.

Staff recommendations include:

1. Address the May 13, 2015 Technical Advisory Committee comments from the Department of Planning and Zoning, Department of Public Works, Environmental Health Department, Talbot Soil Conservation District, the Environmental Planner and the Critical Area Commission prior to preliminary plat submittal.

Commissioner Hughes stated that part of the park is Town Conservation, shouldn't this be changed on the new land use map, to Countryside Preservation. When the property was sold to the County part of the condition of approval was the prohibition against any residential or commercial development. The

underlying zoning ordinance is for a certain number of development rights associated with this parcel, but the underlying easement, restriction and covenants would supercede that, though it could be recommended to change to Countryside Preservation. Ms. Verdery made note of the recommendation.

Chris Waters, Waters Surveying and Bill Wolinski appeared on behalf of applicant and had no further comments.

Commissioner Hughes asked for public comments; none were made.

Commissioner Boicourt moved to approve the Preliminary/Final Major Revision Plat for Talbot County Maryland, Oxford Road (MD Route 33), Oxford, MD 21654, for a public park, provided compliance with staff recommendations occurs; Commissioner Fischer seconded. The motion carried unanimously.

- c. Easton Utilities #SP560—7049 Barkers Landing Road/30770 N Dover Road, Easton, MD 21601 (map 43, grid 3, parcel 16 & 45, zoned Agricultural Conservation), Paul Moffett, Agent.

Mr. Rothwell presented the staff report for Easton Utilities for:

(i) major site plan for the following improvements:

1. To construct a 30 ft. x 90 ft. (2,700 sq.ft.) structure on Tax Parcel 16 to house a methane electric generation facility that will be connected with (and utilize methane from) the adjacent Mid-Shore Regional Landfill (Tax Map 35, Tax Parcel 116). This includes the construction of a methane gas main to connect the existing methane gas flare at the Mid-Shore Regional Landfill (Tax Parcel 116) to the proposed electric generation structure as specified above. The proposed structures and improvements will be located outside the Critical Area.
2. To construct a photovoltaic (solar panels) field within a fenced compound approximately 12.5 acres in size on Tax Parcel 45. The total amount of lot coverage associated with this proposal will amount to approximately 6.09 acres of new impervious surfaces. The proposed photovoltaic field will be located outside the Critical Area.

- ii. Waiver of the landscaping and street tree requirements for major site plans as set forth in the *Talbot County Code* §190-122.

Staff recommendations include:

1. The applicant shall be required to obtain a Special Exception to construct both the proposed methane electric generation facility and photovoltaic field.
2. The applicant shall obtain Minor Revision Plat approval in accordance with the *Talbot County Code*, and comply with all conditions of said approval.
3. Address the May 13, 2015 Technical Advisory Committee comments from the Department of Planning and Zoning, Department of Public Works, Environmental Health Department, Talbot Soil Conservation District, and the State Highway Administration (SHA) prior to Compliance Review Meeting submission.
4. The applicant shall commence construction on the proposed improvements within twelve (12) months from the date of final approval.
5. The applicant shall make applications to and follow all of the rules, procedures, and construction timelines as outlined by the Office of Permits and Inspections regarding new construction.
6. This project will be required to address forest conservation, to include mitigation for the removal of any trees.
7. Future site improvements will be required to obtain site plan approval in accordance with the *Talbot County Code* §190-184. Any expansion of the 'Utility Structures' use will be required to obtain a Special Exception or modification to an existing Special Exception from the Board of Appeals.

Commissioner Hughes stated he sees no need currently for the street trees considering the remoteness of the area, but in the future, if Mr. Brooks should subdivide his property and develop it, would he have to do street trees? Mr. Rothwell stated if it is a subdivision we have the ability to require that. Commissioner Hughes stated that the motor cross facility had to have extensive screening and he wanted to ensure that there was not one rule for one person and another for another person. Mr. Rothwell explained this is a different type of facility that would not cause significant noise or odor disturbances.

Commissioner Hughes asked if the methane generator had limited hours of operation and noise levels.

Paul Moffett, Easton Utilities Manager of Engineering, Water and Wastewater Treatment Facility, Sharon Van Emburgh of Ewing, Dietz, and Jeff Oxnam, Vice President of Operations, Easton Utilities, appeared on behalf of applicant. Mr. Moffett stated the Gen-Set would run 24/7 and would have all the appropriate pollution controls and noise abatement as required by code, but it would not be silent.

Commissioner Hughes stated the motor cross track has had numerous complaints about noise, and the enforcement officer has been out for complaints about noise. If the neighbors hear a motor at night, will there be complaints about a motor running? Mr. Moffett stated the generator has a muffler on it. Ms. Van Emburgh stated it would be within a structure. Commissioner Spies stated it would be running at a fixed rate.

Commissioner Hughes stated he remembered the screening which went into the motor cross and wanted to be equitable with everyone in the future, especially if Mr. Brooks should subdivide his property. He asked if it was possible to put in a screening condition in case Mr. Brooks ever wants to develop his property? Mr. Rothwell stated Mr. Brooks has an existing vegetative screen of mature loblolly pine. From a planning perspective Mr. Brooks' property is a fairly large property. Buffering can be vegetative screening, it can also be distance screening.

Commissioner Boicourt stated he is excited about making methane produce energy instead of sending it into the atmosphere. He is curious about the resources and asked how long they would be able to run this. Mr. Moffett stated they projected 5-7 years. Commission Boicourt also asked if there were grants for this project. Mr. Moffett stated there were not. Ms. Verdery stated there were credits—renewable energy and greenhouse gas credits.

Commissioner Fischer asked how would Planning feel about the buffer if Mr. Brooks did not have the loblolly buffer. Mr. Rothwell stated that would be a factor, the applicant has moved the photovoltaic fields toward the center of the property making it less visible to Mr. Brooks and Mr. Jones when they have to use this farm lane. Commissioner Hughes wants to avoid someone saying they spent fifty thousand dollars on trees and someone else saying they did not have to spend anything. In this case this is why we have the waiver. Future development or another solar field closer to Barkers Landing Road requires staff to revisit this. Mr. Rothwell stated that if they proposed another solar facility that would require another site plan or a modification of the site plan. He further stated that street trees serve multiple purposes, the underlying intent is to beautify a project or section of roadway from a commercial use. In this case you have very little road traffic. Mr. Rothwell stated that he could not give planning advice on speculation.

Commissioner Hughes is satisfied that if they come back to expand the project the Commission will have to revisit the subject of street trees. Ms. Verdery stated that the Commission has to consider the project before them, the design of the project, and the impacts on the neighboring property, as is. It either qualifies for the waiver or it doesn't. What you can do, if given the circumstances of the neighboring properties, if you don't want to waive the landscaping, you can implement the landscaping with a time period that it does not have to be implemented or planted until such time as the adjoining properties are developed. Commissioner Hughes stated that at this time he did not feel the landscaping was needed but he wanted to treat the properties equally.

Mr. Rothwell stated that compared to the MEBA facility on Route 33, not a great deal of buffering was required for that facility, and that is a greatly traveled roadway.

Commissioner Hughes asked for comments from the public; none were made.

Commissioner Fischer moved to approve the Major Site Plan for Easton Utilities, 7049 Barkers Landing Road, Easton, Maryland, tax map 43, grid 3, parcel 16 & 45, provided compliance with staff recommendations occurs; Commissioner Spies seconded. The motion carried unanimously.

Commissioner Spies moved to approve the Waiver for landscaping and street trees for Easton Utilities, 7049 Barkers Landing Road, Easton, Maryland, provided compliance with staff recommendations occurs; Commissioner Boicourt seconded. The motion carried unanimously.

- d. Easton Utilities Sustainability Complex (Appeal #15-1629)—7049 Barkers Landing Road/30770 N Dover Road, Easton, MD 21601 (map 43, grid 3, parcel 16 & 45, zoned Agricultural Conservation), Paul Moffett, Agent.

Mr. Rothwell presented the staff report for Easton Utilities Sustainability Complex special exception modification for the following improvements:

- i. To construct a 30 ft. x 90 ft. (2,700 sq.ft.) structure on Tax Parcel 16 to house a methane electric generation facility that will be connected with (and utilize methane from) the adjacent Mid-Shore Regional Landfill (Tax Map 35, Tax Parcel 116). This includes the construction of a methane gas main to connect the existing methane gas flare at the Mid-Shore Regional Landfill (Tax Parcel 116) to the proposed electric generation structure as specified above. The before-mentioned structures and improvements will involve a change of use of approximately 29,000 sq. ft. (.66 acres) from an approved special exception use (wastewater treatment plant use) to another special exception use (utility structures use). The proposed structures and improvements will be located outside the Critical Area.
- ii. To construct a photovoltaic (solar panels) field within a fenced compound approximately 12.5 acres in size on Tax Parcel 45. The total amount of lot coverage associated with this proposal will amount to approximately 6.09 acres of new impervious surfaces. The proposed photovoltaic field will involve a change of use of approximately 12.5 acres from an existing special exception use (wastewater treatment plant use) to another special exception use (utility structures use). The proposed photovoltaic field will be located outside the Critical Area.

Staff recommendations include:

1. The applicant shall be required to obtain a Special Exception to construct both the proposed methane electric generation facility and photovoltaic field.
2. The applicant shall obtain Minor Revision Plat approval in accordance with the *Talbot County Code*, and comply with all conditions of said approval.

3. Address the May 13, 2015 Technical Advisory Committee comments from the Department of Planning and Zoning, Department of Public Works, Environmental Health Department, Talbot Soil Conservation District, and the State Highway Administration (SHA) prior to Compliance Review Meeting submission.
4. The applicant shall commence construction on the proposed improvements within twelve (12) months from the date of final approval.
5. The applicant shall make applications to and follow all of the rules, procedures, and construction timelines as outlined by the Office of Permits and Inspections regarding new construction.
6. This project will be required to address forest conservation, to include mitigation for the removal of any trees.
7. Future site improvements will be required to obtain site plan approval in accordance with the *Talbot County Code* §190-184. Any expansion of the 'Utility Structures' use will be required to obtain a Special Exception or modification to an existing Special Exception from the Board of Appeals.

Mr. Rothwell explained that the reason for the special exception was a change of use from one special exception use to another special exception use on a portion of the property.

Commissioner Fischer asked if there was a design plan for the building to house the generator. There was review of the design plans included in the site plan package. Mr. Moffet stated the building comes with 6 inches of standard fiberglass insulation. Mr. Hughes stated it would help with the Board of Appeals if they could demonstrate how well the building is insulated.

Commissioner Spies stated he has a little different stance on the noise level. He believes the current standards for noise would be ample. This is an ideal location for it, three kilometers from the road. These generators don't produce that much noise. To invest more money for additional insulation for that low level of noise may be overkill. Commissioner Hughes stated under normal circumstances he would agree, but because of the acrimonious history of the motor cross track it might be helpful for Easton Utilities to be proactive on this point. If Easton Utilities can show this is an appropriate use and they have gone to the nth degree to limit noise, then that should limit complaints.

Commissioner Hughes asked for public comments; none were made.

Commissioner Spies made a positive recommendation to the Board of Appeals to approve the Special Exception of the Easton Utilities Sustainability Complex for the construction of the methane generation facility and the photovoltaic (solar panels) field. All staff conditions shall be complied with. Commissioner Fischer seconded. The motion carried unanimously.

e. Recommendation of Text Amendment for Planned Redevelopment Overlay District to County Council

Ms. Verdery asked that this item be tabled on the agenda because the County Council has not yet introduced this legislation. We have asked that Mr. Armistead and Mr. Smith come before the Commission as they gave the County Council a brief history which got the ball rolling on this legislation. We are creating legislation that will define the purpose of a redevelopment district, meeting certain standards, such as minimum lot size. The County Council has to sponsor the floating district, it then goes to the Technical Advisory Committee at least once to see what the impacts are before moving forward. Then the County Council introduces and it is set before the Planning Commission as a redevelopment plan approval and back to County Council.

Bruce Armistead and Zach Smith appeared before the Commission and gave background of the proposed project. Mr. Armistead stated he has been representing an entity called Capital Properties whose principal is Mr. Cohen. Mr. Cohen purchased Harbourtowne Inn and Conference Center, which is approximately 12.4 acres. He also acquired the golf course which is approximately 132 acres. Mr. Cohen's business model is to acquire properties and improve them. He wants these properties to become a destination resort. The inn is a nonconforming use in the Rural Residential zone. It was constructed in late 1960's, early 1970's. The inn is a set of nonconforming structures. The in-kind replacement rules are very restrictive rules. Mr. Armistead stated all they are proposing to do is recommend the text amendment to adopt the Planned Redevelopment District (PRD) option. This has been tailored to redevelopment projects. If interested in Mr. Cohen's other activities look at Chatham Bars Inn at Cape Cod, this is another project he has done.

Mr. Smith stated Mr. Cohen was very limited in what he could do at the Harbourtowne site. His options were to slap a coat of paint on it or to do improvements to the property as he wanted to do it. That led to their approaching the County Council. This was potentially a missed opportunity. Mr. Cohen was someone who would do a good job and had the willingness and capacity to do something great there, but can't even make the pitch. To come up with a process that was flexible in design but doesn't throw out the rules. The underlying zoning does not go away, the property rights that exist on that property to date do not go away, but as an alternative give the applicant the opportunity if you want qualify to put forward a plan so that you don't have the strict setbacks required, though critical area laws would apply. Put together a plan, come forward and let the County decide.

Commissioner Hughes stated his first worry has been greatly relieved that this would not be for Greenfield development. What about change of use, if at some future time what about Easton Point, would this allow flipping residential to industrial or industrial to commercial.

Mr. Armistead stated they have not seen the legislation so Ms. Verdery would need to comment on that.

Mr. Smith would like to correct his statement. Mr. Cohen does not have to go through the PRD process, it is an alternative. Commissioner Hughes questioned if a property is residential would it stay residential, or will the opportunity present itself to change to commercial or industrial. Mr. Smith stated that would depend on how the legislation is written. It could be written such that it could be site specific and if the site is shown, the existing use is not necessarily the appropriate use or the desired use. It would allow for a proposal to come forward and the County to make a site specific determination. It could also be limited where the County could not make a change. Commissioner Hughes stated the issue is, before the PC would consider the overlay, they need to have some idea what is to go there before they grant the overlay. Ms. Verdery stated they would make that determination based on the development plan.

Commissioner Fischer asked if land could be reused for some other purpose. Ms. Verdery stated that an example would be a large farmhouse converted to a residential inn. Mr. Rothwell stated there would be some type of minimum lot size requirement.

Commissioner Boicourt stated he shares Commissioner Hughes concerns with generic Planned Unit Developments (PUDs), but this sounds like this will be a project that will be good for the County. We want to protect the County, but encourage redevelopment. We want to take the positive, and the protective aspect.

Commissioner Hughes stated the concern we have is that this legislation needs to be drafted very tightly and we have to give this a lot of thought. The PUD concept is an open door in a lot of people's minds. We need to make sure this legislation supports what you want to do but does not leave the door wide open for overly creative projects that are out of bounds with what the comprehensive plan says or impinge upon neighboring property owners and the carrying capacity of the infrastructure.

5. Discussions Items

- a. Towing Business and Impound Yards - Mr. Rothwell explained that this request for discussion item came about due to two business owners in Talbot County, Mr. Gary Sedgwick of Last Chance Recovery Towing and Mr. Grant Trump of TNT Towing. As part of Bill No. 1259, Cottage Industry use and revision of said uses, towing was not specified as a permitted use. We would have to consider this a general service type of use. It may meet the intent of the cottage industry bill and the intent of the other uses that are permitted. The second part of the equation is the State Police are using small towing businesses which require impound yards in remote locations to store small number of cars in secure locations. Small impound yards, 10,000-15,000 square feet, not a junk yard. Both applicants have

467 had State impound yards in the past. We are asking for guidance. The Planning
468 Commission and the Planning Director have the ability under Section 190-16(c)
469 to include other uses that have similar impacts to listed uses, if the Planning
470 Commission finds that a towing use and accessory impound yard is similar to the
471 other specified uses in the Cottage Industry in Section 190-39. Alternatively, if
472 you recommend these are not alternative uses we can recommend a text
473 amendment. Mr. Sedgwick lives on a 7.5 acre property, the second is on a 400
474 acre farm and this would be the homestead. Mr. Trump still has an impound yard.

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476 Commissioner Boicourt stated we have concerns with the facility due to nighttime
477 operation because of lights and noise. We are fairly consistent with the limiting of
478 cottage industry to daytime hours of operation. Mr. Rothwell stated Mr. Trump
479 operated a towing business, an impound yard for approximately 8 years and
480 moved his operation to Chilcutt Road. He still lives at the Gannon Farm and
481 thinks that is the better and preferred location. Mr. Sedgwick is subject to a
482 current abatement order for operating his towing business out of his parcel. He
483 came to the County to correct his nonconformity. We are trying to resolve his
484 situation. Ms Verdery stated that Mr. Sedgwick, if not permitted as a cottage
485 industry we would require him to remove those vehicles. If he is allowed to use
486 the property we can require him to use a certain area for the impound lot.

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488 Ms. Verdery stated site plan approval is required.

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490 Commissioner Hughes stated there should be limitation on hours of operation,
491 limitation on the number of vehicles and the duration. Commissioner Spies stated
492 he had three main concerns: small scale, hours of operation, length of time car
493 spent there. Commissioner Hughes stated that as per the rules of the cottage
494 industry the property had to be five acres, but limit the impound yard to a specific
495 area The general concerns by the Commission were that impound yards and
496 towing facilities operating 24 hours a day is not consistent with other cottage
497 industry uses.

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499 b. Reminder – June 15th next County Council work session on the Comprehensive
500 Plan. Worked on Matrix to get to County Council and will finish Chapter 6
501 review.
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503 c. Elisa Deflaux and Mike Pullen at Critical Area, Sub-Committee 10:30 a.m. and
504 then full Session this afternoon for Bill 1298, nontidal wetlands.
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506 d. Flood Insurance Rate Maps – June 11, St. Michaels, public outreach meeting.
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508 **6. Staff Matters**

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510 **7. WorkSessions**

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512 **8. Commission Matters**

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- 9. Adjournment**—Commissioner moved to adjourn the meeting, Commissioner Fischer seconded the motion. The motion carried unanimously. Commissioner Hughes adjourned the meeting at 11:10 a.m.

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